

Federal, State and Local Governments Newsletter

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MESSAGE FROM THE DIRECTOR

ANDREW E. ZUCKERMAN

As the new Director of FSLG, I am looking forward to working with all types of government entities to help make managing and complying with your Federal tax responsibilities as easy as possible. As the first IRS office devoted exclusively to serving government and quasi-government entities, FSLG has devoted the bulk of its resources thus far to outreach and education activities. These activities were designed to accomplish three tasks: inform this market segment that FSLG is the primary IRS contact for any Federal taxation issues that arise; help educate the market segments in their Federal tax and Social Security tax reporting and withholding responsibilities; and allow FSLG to better understand the needs and the demographics of our customer base. In fact, during fiscal year 2003, we applied approximately 60% of our resources to this effort. We hope it has been helpful to you; we know it has been helpful to us.

Now that FSLG has been up and running for over three years we are undergoing a shift in emphasis of our program from mostly outreach to mostly compliance activities. We hope to apply approximately 75% of our resources in compliance activities such as processing claims for refund, reviewing applicable tax returns to determine their correctness (referred to as compliance checks) and performing actual examinations.

In practical terms, this means that some government entities will be undergoing IRS examinations, probably for the first time. I want to emphasize that these examinations are not initiated to “catch” government entities that have not been complying with the relevant Federal tax laws. Rather, they are being undertaken to determine what Federal tax issues exist for government entities so we can provide appropriate guidance to our stakeholders. They will also assist FSLG in our determination of the effectiveness of our outreach and education program.

Our outreach and education program will still be active. We are trying, however, to make our outreach programs more focused, getting more “bang for the buck” by making presentations primarily to groups of ten or more. If you would like to take advantage of our services, please contact the FSLG Specialist serving your area. We also encourage you to visit our web site at www.irs.gov/govts.

The explanations and examples in this publication reflect the interpretation by the IRS of tax laws, regulations, and court decisions. It is intended for general guidance only, and is not intended to provide a specific legal determination with respect to a particular set of circumstances. You may contact the IRS for additional information. You may also want to consult a tax advisor to address your situation.

Contributors

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QUESTIONS ON BACKUP WITHHOLDING

*BY RHONDA KINGSGLEY AND MARLYCE LUITJENS, FSLG SPECIALISTS
(MIDWEST)*

If you make payments to individuals or businesses who are not your employees, you may be required to withhold on these payments if the payee has not furnished a correct taxpayer identification number (TIN). Below are questions and answers about backup withholding reportable on Form 1099-MISC, Miscellaneous Income.

Who is subject to backup withholding?

You may be required to withhold 28% of payments to a payee if:

- 1) The payee did not furnish a taxpayer identification number (TIN),
- 2) You have been notified the TIN furnished by the payee is incorrect, or
- 3) You have been notified the TIN of the payee is missing.

What payments are subject to backup withholding?

Rents, non-employee compensation for services, royalties, reportable gross proceeds paid to attorneys, and other fixed or determinable gains, profits, or income payments reportable on **Form 1099-MISC**, Miscellaneous Income.

See **Publication 1281**, Backup Withholding on Missing and Incorrect Name/TINs (Taxpayer Identification Numbers) or **Publication 1679**, A Guide to Backup Withholding for Missing and Incorrect Name/TINs, for additional payments subject to backup withholding.

What is a CP2100 or CP2100A Notice?

An IRS notice that tells a payer he or she may be responsible for backup withholding. This may be due to missing or potentially incorrect taxpayer identification numbers identified during the

processing of Form 1099 information returns. It is accompanied by a listing of missing, incorrect, and/or not currently issued payee TINs. Large volume filers (250 or more error documents) receive a CP2100 while all other filers will receive a CP2100A.

What is a Missing Taxpayer Identification Number?

- 1) No TIN was provided,
- 2) The TIN has more or less than nine digits, or
- 3) The TIN has an alpha character as one of the nine positions.

What is an Incorrect Taxpayer Identification Number?

TIN is in the proper format but the Name/TIN combination doesn't match or cannot be found on IRS or Social Security Administration files.

What is a "B" Notice?

If you receive Notice CP2100 or CP2100A indicating an incorrect TIN, a copy of a notice to the payee is included. This "B" Notice informs a payee of backup withholding.

As a payer, what am I required to do to secure a TIN?

A. Initial Solicitation

Use Form W-9, Request for Taxpayer Identification Number and Certification, to request the taxpayer identification number when the transaction occurs.

B. First and Second Annual Solicitation

See **Publication 1281**, Backup Withholding on Missing and Incorrect Name/TINs (Taxpayer Identification Numbers) or **Publication 1679**, A Guide to Backup Withholding for Missing and Incorrect Name/TINs, for instructions regarding the first and second annual solicitation requirements.

When do I begin backup withholding?

A. Withholding should begin when the aggregate payments for the year equal or exceed \$600.

Example: You make three payments of \$200 to a sole proprietor in 2003, on March 31, June 30, and September 30.

The payments made on March 31 and June 30 would not be subject to backup withholding because the \$600 threshold has not been reached. However, you would withhold 28% of the payment on September 30 if:

1. The sole proprietor has not furnished a TIN to you by that date, or
2. The IRS notified you the TIN was incorrect and the sole proprietor did not furnish a certification (Form W-9 sent with the first "B" notice) or validation (required from the SSA or IRS per the second "B" Notice).

or

B. Withhold immediately if the payee was either:

1. Paid at least \$600 in a prior year and a Form 1099 was issued, or
2. Subject to backup withholding in the prior year.

Stop backup withholding when you receive either a TIN or the required verification from SSA or IRS (in response to a second “B” notice) from the payee.

Additional resources regarding backup withholding questions:

The Information Reporting Program Centralized Call Site

Telephone: 1-866-455-7438 (toll-free) Monday through Friday from 8:30 a.m. to 4:30 p.m., Eastern Time

E-Mail: mccirp@irs.gov

Contact your local FSLG Specialist for the Backup Withholding Job Aide featuring additional information and step-by-step instructions regarding these backup withholding situations. A directory of Specialists is included in this newsletter.

NEW GUIDANCE FOR AGENCIES ADMINISTERING HOME CARE SERVICE PROGRAMS

BY PAUL CARLINO, IRS CHIEF COUNSEL (AUTHOR OF NOTICE 2003-70) AND WANDA VALENTINE, FSLG PROGRAM ANALYST

A state or local agency that is designated as an agent under Rev. Proc. 80-4, or engages third parties to provide payroll functions on behalf of home-care service recipients, may be affected by the new proposed revenue procedure in Notice 2003-70. This proposed revenue procedure provides updated guidance to more adequately address reporting and payment of chore workers' employment taxes for state and local government agencies administering home-care services for disabled individuals and other welfare recipients.

Home-care service providers are more commonly referred to as “chore workers.” Generally, the home-care service recipient is the common-law employer of the chore worker or home-care service provider if the home-care service recipient has the right to direct and control the performance of service. However, the service recipient may designate a state or local agency as an agent to meet any Federal employment tax obligations on behalf of the service recipient employer, such as withholding and reporting requirements. When this occurs, there are special procedures for state and local agencies to follow. State and local agencies can also hire third parties to perform their agent obligations. In addition to Notice 2003-70, information on these procedures can be found in Revenue Procedures 70-4 and 80-6, and Notice 95-18.

Highlights of Proposed Notice 2003-70

State Agents

- A state agent is a state or local agency administering an in-home domestic services program and designated as agent for the service recipients in accordance with *Rev. Proc. 70-6* as modified by *Rev. Proc. 80-4* and the revenue procedure contained in Notice 2003-70.
- As directed by Notice 95-18, a state agent should obtain a separate EIN (in addition to the one obtained for use in reporting taxes of its own employees) for use in reporting taxes on behalf of all the service recipients for whom it acts as agent.

- A service recipient does not need to obtain an EIN solely for the purpose of designating an agent and reporting and paying Federal employment taxes. However, the service recipient might need an EIN to satisfy the procedures for making contributions to a state unemployment fund.
- Using its special EIN, a state agent may file one FUTA return on behalf of all service recipients for whom it acts as agent. Attached to each return shall be the statement, "This return is filed under authorization granted in accordance with Section 3504 of the Internal Revenue Code."
- A state agent that withholds, reports and pays employment taxes on behalf of service recipients who employ home-care service providers is permitted to remit taxes with a timely filed return. The state agent should note its status as a state or local government agency authorized to act as a section 3504 agent for service recipients on the return, citing Notice 2003-70 and the revenue procedure. The note will indicate to the IRS that any penalties for failure to deposit timely should not be assessed.
- A state may either hire a reporting agent or designate a subagent to perform the obligations of an employer that accrue to the state as agent.

Reporting Agents

- A reporting agent is an accounting service, franchiser, bank, service bureau or other entity authorized to perform one or more acts on behalf of an employer, including sign and file Forms 940 and 941 and make Federal tax deposits for the taxes reported on those forms.
- A reporting agent assumes no liability with the IRS. The state and the service recipient remain liable for any unfulfilled employment tax obligations (including penalties.)
- The reporting agent should use the special EIN of the state agent.
- The reporting agent must file only one return for each tax return period regardless of the number of service recipients for whom the state is acting as agent. Form 941 should be used to report the aggregate FICA taxes and withheld income taxes. The state agent's name and special EIN are to be entered as provided by the instructions for the return. Attached to each return shall be the statement, "This return is filed under authorization granted in accordance with Section 3504 of the Internal Revenue Code." The reporting agent or the state agent must maintain records that will show the full wages paid to each home-care service provider on behalf of, and identified by, each service recipient for whom the state agent acts.
- A reporting agent should file one FUTA return using the name and special EIN of the state agent. Attached to each return shall be the statement, "This return is filed under authorization granted in accordance with Section 3504 of the Internal Revenue Code."
- When the state agent uses a reporting agent, it is permitted to remit employment taxes at the time of filing, rather than being required to remit taxes on a more accelerated and frequent basis.

Subagents

- A subagent is an individual or entity designated as an agent by a state agent in accordance with *Rev. Proc. 70-6* and the revenue procedure contained in Notice 2003-70.
- When a subagent is used, all parties remain liable. The service recipient is liable by virtue of his or her status as common law employer. Because both the state and the subagent are designated agents acting pursuant to section 3504 of the Code, these parties are also liable.
- The subagent must file only one 941 return for each tax return period using the state agent's name and special EIN regardless of the number of employers for whom the subagent acts. Written on the return should be the statement "This return is filed under authorization granted in accordance with Section 3504 of the Internal Revenue Code". The subagent should maintain records that will show the full wages paid to each home-care service provider on behalf of, and identified by, each service recipient for whom it acts.
- A subagent is NOT eligible to remit taxes with a timely filed return. A subagent must follow the deposit schedule in section 31.6302-1 of the Employment Tax Regulations that is otherwise applicable. See Publication 15, Employer's Tax Guide (Circular E), for more information.
- A subagent should file one Form 940 using the name and special EIN of the state agent on behalf of all service recipients for whom it acts. Written on the return should be the statement "This return is filed under authorization granted in accordance with Section 3504 of the Internal Revenue Code."

IRS is actively seeking comments from the public on this proposed revenue procedure that will be finalized at some future date. You may also want to review additional information outlined in the actual Notice of proposed revenue procedure. To read Notice 2003-70 in its entirety, please visit our Website at www.irs.gov/govts.

WITHHOLDING ON STATE LOTTERY WINNINGS

BY STEWART ROULEAU, FSLG SENIOR ANALYST

The Jobs and Growth Tax Relief and Reconciliation Act of 2003 (PL 108-27) made changes to several Federal income tax withholding rates, including the rate on proceeds from a state-controlled lottery.

States must issue Form W-2G, Certain Gambling Winnings, to any recipient of \$600 or more on a single wager if the proceeds are at least 300 times the amount of the wager. The payer must withhold Federal income tax if the amount won less the cost of the wager exceeds \$5,000. After May 28, 2003, the payer should withhold 25% of the amount from the recipient. The amount withheld is reported in box 2 of Form W-2G.

Before that date, winnings awarded in 2003 were subject to withholding at a rate of 27%. However, no adjustment needs to be made for those payments. This amount is shown on the Form W-2G issued to the winner and the recipients will receive credit for the full amount withheld on their 2003 individual income tax returns.

Installment payments are subject to the same 25% withholding if the total proceeds from the wager will exceed \$5,000.

If the winner does not furnish a taxpayer identification number (TIN), and the proceeds are at least \$600 and 300 times the amount of the wager, then you must apply backup withholding at a rate of 28% to any amounts that are not subject to regular gambling withholding. Prior to May 29, 2003, the rate had been 30% for backup withholding.

Generally, a 30% withholding rate applies to gambling winnings of nonresident aliens. These payments are reported on Form 1042 and 1042-S. For more information, see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

REPORTING REQUIREMENTS FOR FEDERAL AGENCIES

BY JAMES BOYD, FSLG SPECIALIST (MID-ATLANTIC)

Federal agencies have unique reporting requirements with respect to information returns. Two requirements for a Federal agency to consider are the requirements to issue Form 1099-MISC to corporations and to issue Form 8596 for any person who has entered into a contract with a Federal executive agency.

The reporting requirements of Internal Revenue Code (IRC) section 6050M are different from the requirements for IRC section 6041A. The purpose of section 6050M is to provide the Service with information concerning sources from which it can collect delinquent taxes owed by Federal contractors, while section 6041A is intended to identify unreported income.

Section 6050M provides that the head of every executive agency that enters into any contract shall make a return for each person with whom the agency entered into a contract during the calendar year. Section 1.6050M-1(b)(2) of the Income Tax Regulations defines a contract as an obligation of a Federal executive agency to make payment of money (or other property) to a person in return for the sale of property, the rendering of services, or other consideration. The regulations limits the reporting requirement by providing that any contract or contract action for which the amount obligated is \$25,000 or less does not have to be reported. This information is required to be filed on Form 8596, Information Return for Federal Contracts.

A Federal executive agency of the United States as defined by 6050M(b), is any executive agency other the General Accounting Office, any military department and the United States Postal Service and Postal Rate Commission of the United States.

The reporting requirements of section 6041A states that any service-recipient engaged in a trade or business that pays in the course of such trade or business during any calendar year remuneration for such services in the aggregate of \$600 or more, must file an information return. The \$600 or more paid by a Federal executive agency to a corporation is also subject to the information reporting requirements per section § 6041A(d)(3). However, contracts between Federal agencies and corporations that qualify as classified or confidential (i.e., for national security reasons) under Code Sec. 6050M(e) are exempt from the reporting requirement.

The following examples are intended to provide a better understanding of when a requirement to report under sections 6041A and 6050M.

Example 1. Agency Y pays Corporation C for cleaning services. The contract between Agency Y and Corporation C provides that the total payment for the services is \$35,000.

The payment for the cleaning services is subject to the information reporting under section 6041A. Agency Y must file Form 1099-MISC. In addition, it is subject to information reporting under section 6050M because the contracted amount exceeds the \$25,000 threshold. Agency Y must file Form 8596.

Example 2. Agency Y pays Corporation A for the purchase of office equipment. The contract requires a total payment of \$25,000 for the office equipment.

The payment for office equipment is not for services; therefore it is not subject to the requirements of section 6041A. The contract does not exceed \$25,000 obligating the agency, thus there is no information reporting under section 6050M. The agency does not have to file either Form 1099-MISC or Form 8596.

Example 3. Agency Y pays Corporation B for repairs to one of the agency's trucks. The repairs include the replacement of parts. The agency pays \$1,500 for the repairs of which \$800 is for services.

The payment for the truck repairs is subject to the information reporting under section 6041A. Agency Y must file Form 1099-MISC. It is not subject to the requirements of section 6050M.

Section 6041A and section 6050M are separate information reporting requirements. In regards to a contract and the payments under that contract, a Federal agency may be required to make an information return only under section 6041A, only under section 6050M, under both sections, or under neither section.

For more information on the reporting requirements for Federal agencies, see Revenue Ruling 2003-66, available at www.irs.gov/govts.

GUIDE TO GOVERNMENTAL PAYMENTS INFORMATION REPORTING

The following is a quick reference guide to the most important information returns that you may be responsible for filing. For more complete information, see the Instructions for Forms 1099, 1098, 5498, and W-2G, available at www.irs.gov.

1099-G:

Agriculture subsidy payments: Amounts paid by the U.S. Department of Agriculture under a subsidy program.

Taxable grants: Energy conservation for property under section 38 or U.S. dwelling, FEMA disaster prevention grants, programs administered by an Indian tribal government.

Unemployment compensation: Any payments of \$10 or more to a recipient. Also show optional income tax withholding.

Income tax refunds: Refunds, credits or offsets paid to a recipient for state or local income tax are reportable if they are \$10 or more. These will be included in income of

the recipient if he or she claimed an itemized deduction for tax withheld in the year the refund applies to.

1099-MISC:

Nonemployee compensation: Payments of \$600 or more for services (including parts and materials) to recipients other than an employee. This includes payments for rent, fees to informers, awards, and expenses reimbursed to individuals other than employees. For Federal agencies, it includes payments to corporations for services.

W-2G:

Gambling winnings: Amounts paid from lotteries or other state-paid gambling activities.

1098-T:

Tuition payments: Qualified tuition and related expenses.

1042-S:

Foreign persons: Payments, including gambling winnings, to foreign persons subject to withholding.

TAX EXEMPT BONDS SETS FY 2004 WORKPLAN PRIORITIES

BY JOSEPH GRABOWSKI, SENIOR TEB ANALYST

Tax Exempt Bonds (TEB) has announced the organization's workplan priorities for fiscal year 2004. The plan provides that TEB will continue to build and develop relationships with TEB customers, stakeholders, and partners to leverage limited human and financial resources to accomplish its mission. Additionally, emphasis will continue to be placed on emerging areas of concern and continuing investigations into arbitrage motivated and/or abusive transactions.

TEB has expanded its preexisting voluntary closing agreement program (VCAP) to encourage issuers, conduit borrowers and other parties to bond transactions to exercise due diligence and to attempt to correct any issuance and post-issuance infractions of the applicable sections of the Internal Revenue Code and Regulations.

This expansion reflects the Service's continuing policy of taxing bondholders only as a last resort and TEB's desire to resolve tax-exempt bond infractions with other parties to bond transactions. TEB will continue to consider comments from the bond community with respect to how the VCAP program can be improved.

The focus of the TEB Field Operation function is to identify and correct noncompliance with fairness and the highest level of integrity. Examinations are conducted at the issuer level, consistent with the continuing policy to avoid taxing individual bondholders. Field Operations uses section 6700 and other alternative mechanisms to address potentially abusive transactions.

The FY 2004 operating priorities of TEB are:

- Developing and maintaining a highly qualified workforce;
- Providing a quality environment for TEB employees;
- Maintaining partnerships with customer and stakeholder groups;
- Collecting data from Customer Satisfaction Surveys and Focus Groups to identify areas for improving service;
- Implementing improvements based on employee satisfaction surveys;
- Enhancing quality review standards for TEB examinations;
- Developing a strategy to enhance return processing to increase the amount of return data available either through imaging returns or processing returns utilizing scanning (OCR) technology;
- Refining voluntary compliance resolution guidelines, programs, procedures;
- Applying examination resources to timely conduct compliance program initiatives and address and resolve emerging issues; and
- Continuing emphasis on conducting quality examinations and applying IRC 6700 penalties, when appropriate.

The complete FY 2004 TEB workplan can be found on the TEB website at www.irs.gov/bonds.

Federal, State and Local Governments Contacts

State	Specialist	Telephone Number	Ext.
Alabama	Judy Nichols	(251) 340-1781	
	John Givens	(251) 340-1761	
Alaska	Gary Petersen	(907) 456-0317	
Arkansas	Jan Germany	(501) 324-5328	253
Arizona	Kim Savage	(928) 214-3309	5
California	Gordon Parker	(909) 388-8161	
	Phyllis Garrett	(213) 576-3765	
	Fred Darbonnier	(916) 974-5614	
Colorado	Karen Porsch	(719) 579-0839	231
	Chuck Sandoval	(303) 446-1156	
Connecticut	Phyllis Burnside	(401) 525-4205	
Delaware	Kevin Mackesey	(302) 856-3332	12
Florida	Sheree Cunningham	(727) 570-5526	440
	Fernando Echevarria	(954) 423-7406	
	Paulette Leavins	(904) 220-6764	
	Mae Whitlow	(407) 660-5822	293

Georgia	Denver Gates	(404) 338-8205	
Hawaii	Sue Ann Jansen	(503) 326-5057	
Idaho	Karen Porsch	(719) 579-0839 231	
Illinois	Ted Knapp Joyce Reinsma Janie Smith	(618) 244-3453 (312) 566-3879 (630) 493-5148	
Indiana	Valerie Hardeman	(317) 226-5305	
Iowa	David Prebeck	(515) 573-4120	
Kansas	Gary Decker Allison Jones	(316) 352-7475 (316) 352-7443	
Kentucky	Ray McLennan	(270) 442-2607	127
Louisiana	Gloria Brooks Robert Lettow	(225) 389-0358 (318) 869-6312	119
Maine	Bob Westhoven	(207) 784-6988	
Maryland	James A. Boyd	(410) 962-9258	
Massachusetts	Mark A. Costa	(617) 320-6807	
Michigan	Daniel Clifford Lori Hill	(313) 628-3109 (906) 228-7831	
Minnesota	Pat Wesley	(218) 720-5305	225
Mississippi	John Givens Robert Lettow	(251) 340-1761 (318) 869-6312	
Missouri	Joe Burke Sharon Boone	(636) 940-6389 (417) 841-4535	
Montana	Katherine Dees	(406) 761-1825	229
Nebraska	Thomas Goman	(402) 361-0202	
Nevada	Gordon Parker	(909) 388-8161	
New Hampshire	Bob Westhoven	(207) 784-6988	
New Jersey	Pat Regetz Jennifer Macht	(908) 301-2119 (732) 819-3760	322
New Mexico	Toni Holcomb	(505) 837-5541	
New York	Martin Boswell Ernest Child	(315) 448-0811 (585) 262-1902	110

	Henry Ng Fran Reina	(212) 719-6600 (315) 793-8171	
North Carolina	Clifford Brown	(336) 378-2966	
North Dakota	Al Klamon Rhonda Kingsley	(701) 227-0133 (701) 239- 5400	261
Ohio	Trudee Billo Amy Genter	(419) 522-2359 (419) 522-2259	
Oklahoma	Pat O'Neil	(405) 297-4895	
Oregon	Marilee Basaraba Sue Ann Jansen	(503) 326-5030 (503) 326-5057	
Pennsylvania	Patricia Crawley Doug Siegert Nora Bliven	(215) 861-1364 (412) 395-4871 (717) 291-1991	118
Rhode Island	Phyllis Burnside	(401) 525-4205	
South Carolina	Clifford Brown	(803) 253-3523	
South Dakota	Marlyce Luitjens	(605) 226-7216	231
Tennessee	Ray McLennan	(270) 442-2607	
Texas	Olivero Martinez Steve O'Brien Robert Jackson Susan Serrano	(972) 308-1180 (512) 464-3120 (281) 721-7993 (512) 499-5435	
Utah	Katherine Dees	(406) 761-1825	229
Vermont	Fran Reina	(315) 793-8171	
Virginia	Eugenia Bahler Michael Durland	(703) 285-2350 (540) 887-2600	138 18
Washington	Clark Fletcher	(425) 489-4042	
West Virginia	Michael Durland	(540) 887-2600	18
Wisconsin	Susan Borchardt Ruthann Watts	(414) 297-1672 (262) 513-3520	
Wyoming	Dwayne Jacobs	(307) 672-7425	33

CALENDAR OF EVENTS

The following upcoming national events may be of interest to you. FSLG representatives may be at these events. For more information, contact the organization.

National Association of College and University Business Officers Tax Forum
New Orleans, LA
December 4-5, 2003
nacubo.org

National League of Cities Congress of Cities and Exposition
Nashville, TN
December 8-13, 2003
nlc.org

National Association of State Comptrollers Annual Conference
Indianapolis, IN
March 18-20, 2004
nasact.org